THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Writ Petition (M/S) No. 213 of 2006

1. Murti Bhagwan Sri Sri Braharameshwar Shiv
   Thakur Ji Maharaj Virajman, Bhola Giri, Dharmshala,
   Bhola Giri Road Haridwar, through Swani Devanand
   Saraswati, R/O Bhola Giri Sanyas Ashram, Bhola
   Giri Road Haridwar.
2. Swami Devanand Sarswati Disciple Swami Ashimananda,
   Sarswati Sarvarakar Shevaiyat Mandir, R/O Bhola Giri,
   Sanyas Ashram, Bhola Giri Road, Haridwar.

……Petitioners.

Versus

1. III Fast Track Court/ Additional District Judge, Haridwar
2. First Additional Civil Judge (Junior Division) Haridwar.
3. Sanyasi Sangha alleged registered society West Bengal
   Situated Sri Guru Bholanand Ashram.
4. Swami Sarvasanandigiri disciple Dhurvanand Guru.
5. Swami Muktanandgiri disciple Swami Sachidanandagiri,
6. Swami Durganandgiri disciple Swami Harigiri,
7. Swami Vimalanandgiri disciple Swami Vaidhnathgiri,
8. Trust of Swami Bholanand,
9. Swami Bhawatmanandgiri disciple Swami Mahdevnandgiri
10. Swami Sardhanandgiri disciple Swami Jyotrimynandgiri,
11. Brahmchari Ramanand disciple Swami Sachinanadgiri,
    Respondent nos. 3 to 11 R/O Bholanand Sanyas Ashram,
    Haridwar

… Respondents.

Sri Dinesh Chauhan holding brief of Sri N.S.Negi, learned counsel for the petitioners.
Sri Nand Prasad, learned Standing Counsel for the State-respondents.
Sri M.S. Tyagi, learned counsel for respondent no. 5-Caveator.

Dated March 09, 2006

Hon'ble B.S.Verma, J

Heard learned counsel for the parties.

The petitioners have filed the present writ petition for quashing the order dated 20-01-2005 passed by the Ist Additional Civil Juge (Junior Division) Haridwar, whereby the application no. 217 C under Order 8, Rule 10 C.P.C. moved in O.S. No. 210 of 1992 was rejected and order dated 3.12.2005 passed by Additional District Judge, III Fast Track Court Haridwar passed in Civil Revision No. 17

of 2005, whereby the revision was dismissed (Annexure No. 4 and 5 respectively).

Application No. 217-C2 was moved by the petitioners with a prayer that the suit be decreed under Order 8, rule 10 C.P.C. after hearing both the parties and considering the objection of the defendant. The Ist Additional Civil Judge (Jr. Div.) Hardwar has rejected the application on the ground that the defendant no. 6 has already filed written statement and the case is fixed for cross-examination of P.W.1 and the other defendant no. 11, 12, 13 and 14 have also moved application 225-C2 with the averment that the written statement filed by the defendant no.6 be treated written statement on their behalf.

Order 8, Rule 10 C.P.C. provides procedure when party fails to present written statement called for by Court, which reads as under:-

"Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

From a perusal of the language used in Order 8, Rule 10 C.P.C. it is clear that when any party fails to present a written statement within a time permitted or fixed by the court, as the case may be, the Court shall pronounce the judgment against him, or make such order in relation to the suit as it thinks fit. It is the discretion of the Court.

The Apex Court, while dealing with the provisions of Order 8, Rules 10, 9 and 1 C.P.C., in the case of Kailash Vs. ***Nankhu and other reported in (2005) 4 S.C.C., 480*** *in paragraph no. 32 has held that* ***"Under Rule 10, the court need not necessarily pronounce***

judgment against the defendant who failed to file written statement as required by Rule 1 or Rule 9. The court may still make such other order in relating to the suit as it thinks fit."

The impugned order passed by the learned Additional Civil Judge (Jr. Div.) Hardwar (respondent no. 2) does not suffer from any illegality or perversity.

The writ petition is hereby dismissed in-limine.

(B.S.Verma, J.)

RCP